

Testimony By Mr. Daniel Ortega

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Mr. Chairman and Members of
the committee:

Let me
take this opportunity to thank you for inviting me to testify today to express my opinions about the dangers of federal and state proof of citizenship and voter identification legislation. I have been an attorney in Arizona for over twenty nine (29) years and I have had the opportunity to participate and litigate a host of state election law cases, two redistricting cases, voting rights cases, and currently I am Arizona counsel with the Mexican American Legal Defense and Education Fund in the case of Gonzalez v. State of Arizona which challenges Arizona's Proposition 200 proof of citizenship and voter identification requirements. Furthermore, I am a partner with the firm of Roush, McCracken, Guerrero, Miller & Ortega a firm which concentrates its practice on the litigation of personal injury and wrongful death cases.

Legislation like Arizona's
Proposition 200 clearly places significant burdens on voting at the time of registration and on election day. These requirements will have a disproportionate impact upon racial and ethnic minorities, the poor, and the elderly. These requirements also violate the U.S. Constitution, federal law and state law.

The
proponents of Proposition 200 allege that it would prevent widespread voter fraud by non-citizens. The fact is that they could not present any credible evidence of voter fraud by non-citizens that would require a response as costly and discriminatory as Arizona's Proposition 200. Proposition 200 is simply a harmful solution to a problem that does not exist.

The tragedy is that the implementation of Proposition 200 has had and will continue to have dramatic damaging effects. In Maricopa County alone more than 15,000 voter registration applications have been rejected for failure to provide documentary proof of citizenship.

Currently, under Proposition 200 new voter registration applicants must submit evidence of United States citizenship, such as an Arizona driver's license issued after October 1, 1996; a driver's license issued by another

state that requires proof of U.S. citizenship; a birth certificate verifying U.S. citizenship; a U.S. passport; naturalization papers; or tribal identification documents. If you cannot produce any of these documents your voter registration application is rejected.

Proposition 200 also requires that in order to receive a ballot a person who appears at the polls to vote must present a photo identification that contains the name and address of the voter or two forms of identification that contain their name and address.

Proposition 200's proof of citizenship and voter identification substantially and disproportionately burden the voting rights of low income, minority and elderly voters, who are less likely to possess the required documents and most likely to have difficulty obtaining them. The courts and federal agencies have recognized that identification requirements cause minority communities disproportionate harm.[1]

Proof of

citizenship and voter identification requirements are reminiscent of the unconstitutional poll taxes levied upon African American voters in the south. Forty (40) years ago the United States Supreme Court held that poll taxes may not be used to abridge the right to vote in state elections. See *Harper vs. Virginia State Board of Elections*, 383 US 663, 666 (1996). The court struck down the state poll tax as unconstitutional because voter qualifications have no relation to wealth.

The Twenty Fourth Amendment to the U. S. Constitution prohibits the denial of the right to vote in federal elections through poll taxes.

The challenge

of securing the documentation necessary to vote in Arizona under Proposition 200 is compounded by the high poverty rates in the state, which also disproportionately affect the minorities' ability to participate in elections. The 2000 census shows that 13% of Arizona's residents meet the federal definition of poverty and 73,000 Arizona families earn less than \$10,000 per year. In Arizona, Latinos, African Americans and members of other ethnic groups are far more likely than Anglos to live in poverty; 33% (472,770) of the Latino population and 31% (47,950) of the African American population in this state live in poverty, compared with only 11% (344,750) of Anglos.

The law

requires the otherwise qualified voter to essentially pay a fee to secure

acceptable documentation as a condition to voting. The poll tax struck down by the Supreme Court in 1966 was \$1.50. In current dollars, that is approximately \$8.00. That amount is less than the cost of obtaining the forms of identification required by Proposition 200. The fee to obtain an Arizona's driver's license depending on your age can range from \$10 to \$25. The fee to obtain an Arizona birth certificate is \$15 for persons born prior to 1990. The fee to obtain a U.S. passport is \$85 for persons over sixteen (16) years of age.

In conclusion the proof of citizenship and voter identification requirements of Arizona's Proposition 200 will suppress voter participation and have a chilling affect upon the Latino community's ability to participate in the political process. Thank you for the opportunity to participate.

[1] In 2001 a federal court enjoined the use of an identification requirement at the polls in Lawrence, Massachusetts. The court found that "the burden imposed by this requirement will fall disproportionately on the Latin American community, thereby violating Section 2 of the Voting Rights Act" see Morris vs. City of Lawrence, case No. 01-11889 (Nov. 5, 2001, D. Mass.) In 1997, the Federal Election Commission noted that the photo identification requirements not only involve major expenses but, more importantly, represent an undue and potentially discriminatory burden on citizens in exercising their right to vote.